



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,257	10/26/2001	Yves Delmotte	WM-267.00	3743

7590 03/10/2006

Janice Guthrie, Ph.D.  
BAXTER Healthcare Corporation  
17511 Armstrong Avenue  
Irvine, CA 92614

EXAMINER

SILVERMAN, ERIC E

ART UNIT	PAPER NUMBER
----------	--------------

1615

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/004,257	DELMOTTE, YVES	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eric E. Silverman, PhD	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) 32-72 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

### **DETAILED ACTION**

Applicant's amendments and arguments, filed 12/29/2005, have been received.

This application contains claims 32 – 37 drawn to an invention nonelected with traverse in response filed 6/14/2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 – 9, 15, 17 – 26, and 29 – 31 **remain** rejected under 35 U.S.C. 103(a) as being unpatentable over Delmotte et al, US 5,989,215, for reasons of record.

### ***Response to Arguments***

Applicants arguments have been fully considered, but are not persuasive. Applicant argues that Delmotte fails to disclose or suggest a biopolymer membrane with a radius of curvature of less than 5 cm, with a solvent content of less than 5%, and with a density of less than 1 g/cm<sup>3</sup>. It is noted that Delmotte teaches the use of the membrane for hemostasis, for instance, for stopping bleeding to wounds (col. 13, lines 25 – 46 and col. 14, lines 47 – 60). The artisan would understand this teaching to mean that the composition should be applied at the site of the wound, on order to seal the wound. Accordingly, when the wound is on a section of the body that has a radius of

Art Unit: 1615

curvature of less than 5 cm, the artisan would follow the suggestions of the Delmotte by making the membrane over the wound, and in doing so would satisfy the limitation. It is further noted that Delmotte suggests spraying the membrane precursor as a mode of administration (col. 12, lines 10 – 32). The artisan understands that spraying is a form of drying. As such, the artisan would understand that Delmotte is suggesting the creation of a dry membrane, and would be merely following the suggestion of the prior art by lowering the solvent content to less than 5%. With respect to the argument regarding the density, it is noted that the artisan would recognize various manipulations taught or suggested by Delmotte in making the membrane, such as spraying and mixing particular ingredients, and adjusting the pore size, will also affect the density. Since the composition taught by Delmotte has the same ingredients and physical properties (such as pore size) as that of instant claims, the artisan would further understand that the density will be commensurate with instant claims. It is well understood that merely claiming a previously unknown or unrecognized feature of the prior art does not by itself make the claimed matter patentable over the prior art.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

Art Unit: 1615

reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claims 27 – 28 **remain** rejected under 35 U.S.C. 103(a) as being unpatentable over Delmotte in view of Sierra et al., US 5,989,215 for reasons of record.

***Response to Arguments***

Applicant's arguments have been fully considered but are not persuasive. Applicant argues that these claims are allowable since they depend on claim 1, and since Sierra fails to make up for the alleged shortcomings of Delmotte as applied to claim 1. Since the arguments regarding claim 1 have been addressed, these arguments are addressed as well.

Claims 10 and 11 **remain** rejected under 35 U.S.C. 103(a) as being unpatentable over Delmotte, US 5,989,215 in view of Lee et al., US 4,344,190 for reasons of record.

***Response to Arguments***

Applicant's arguments have been fully considered but are not persuasive. Applicant argues that these claims are allowable since they depend on claim 1, and since Lee fails to make up for the alleged shortcomings of Delmotte as applied to claim 1. Since the arguments regarding claim 1 have been addressed, these arguments are addressed as well.

Claims 10 and 11 **remain** rejected under 35 U.S.C. 103(a) as being unpatentable over Delmotte, US 5,989,215 in view of Redl et al., "In Vitro Properties of Mixtures of Fibrin Seal and Antibiotics", Biomaterials, January 1983, Vol. 4, pp. 29 – 32.

It is noted that there was some confusion as to which Redl et al. reference was being used in this rejection. Examiner apologizes for the confusion, and hopes that the interview with Applicant's attorney was clarifying. It is noted that in Applicant's reply, page 18, footnote 6, Applicant notes that the rejection responded in Applicant's reply is in fact the rejection stated above. It is further notes that the initial office action does not cite Redl et al., US 4,631,055 in the context of the rejection of claim 14.

#### ***Response to Arguments***

Applicant's arguments have been fully considered, but are not persuasive. Applicant argues that claim 14 is patentable based on its dependence on claim 1. Since the arguments regarding claim 1 have been responded to, this argument is deemed to be responded to as well. With regard to Applicant's argument that Redl does not teach a fibrin seal incorporating antibiotics, attention is drawn to the title of the reference, "In Vitro Properties of Mixtures of Fibrin Seal and Antibiotics".

Claim 12 **remains** rejected under 35 U.S.C. 103(a) as being unpatentable over Delmotte, US 5,989,215 in view of Herrin et al., US 3,919,414.

#### ***Response to Arguments***

Applicant's arguments have been fully considered but are not persuasive. Applicant argues that these claims are allowable since they depend on claim 1, and since Herrin fails to make up for the alleged shortcomings of Delmotte as applied to

Art Unit: 1615

claim 1. Since the arguments regarding claim 1 have been addressed, these arguments are addressed as well.

Claim 13 **remains** rejected under 35 U.S.C. 103(a) as being unpatentable over Delmotte, US 5,989,215 in view of Reich US 5,764,488.

***Response to Arguments***

Applicant's arguments have been fully considered but are not persuasive. Applicant argues that these claims are allowable since they depend on claim 1, and since Reich fails to make up for the alleged shortcomings of Delmotte as applied to claim 1. Since the arguments regarding claim 1 have been addressed, these arguments are addressed as well.

Claim 16 **remains** rejected under 35 U.S.C. 103(a) as being unpatentable over Delmotte, US 5,989,215 in view of Antanavich, US 5,585,007.

***Response to Arguments***

Applicant's arguments have been fully considered but are not persuasive. Applicant argues that these claims are allowable since they depend on claim 1, and since Reich fails to make up for the alleged shortcomings of Delmotte as applied to claim 1. Since the arguments regarding claim 1 have been addressed, these arguments are addressed as well.

***Conclusion***

No claims are allowed. No claims are free of the prior art.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric E. Silverman, PhD whose telephone number is 571 272 5549. The examiner can normally be reached on Monday to Friday 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 571 272 0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.




Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric E. Silverman, PhD  
Art Unit 1615



THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600